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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, et al.,)	Case No. 2:17-cv-00105-SAB
)	ANSWER OF DEFENDANT
Plaintiff,)	VICKERY
v.)	
)	
KROMTECH ALLIANCE)	
CORPORATION, et al.,)	
)	
Defendant.)	

Defendant Chris Vickery ("Vickery"), in answer to the Complaint of Plaintiffs River City Media, LLC, Mark Ferris, Matt Ferris, and Amber Paul, admits, denies, and alleges as follows. All allegations not specifically admitted are denied.

I. PRELIMINARY STATEMENT

1. Vickery lacks sufficient information to form a belief as to the statements and therefore denies.

2. Vickery lacks sufficient information to form a belief as to whether River City has been sued or investigated for violating email marketing regulations. Deny remaining averments.

3. Deny.

4. Deny.

5. Deny.

6. Vickery admits that other Defendants also publicized the results of

1 his investigations. Vickery denies conducting a cyberattack against River City and
2 any remaining averments.

3 7. Deny.

4 8. Vickery does not believe a response is required. To the extent that
5 one is required, deny.

6 II. JURISDICTION AND VENUE

7 9. Admit.

8 10. Admit.

9 11. Admit.

10 12. Admit.

11 13. Admit.

12 14. Admit.

13 15. Without sufficient information to admit, therefore deny.

14 III. PARTIES

15 16. Without sufficient information to admit, therefore deny.

16 17. Without sufficient information to admit, therefore deny.

17 18. Without sufficient information to admit, therefore deny.

18 19. Without sufficient information to admit, therefore deny.

19 20. Deny.

20 21. Defendant Kromtech is a German company headquartered in Dubai.
21 Kromtech operates the website MacKeeper.com and the apps and services of the
22 same name. Without sufficient information to admit, therefore deny remaining
23 averments.

24 22. Admit.

25 23. Admit.

26 24. Vickery does not believe a response is required. To the extent that
27

one is required, deny.

25. Deny.

IV. STATEMENT OF FACTS

A. Introduction

26. Without sufficient information to admit, therefore deny.

27. Deny it was a well-reputed company. Without sufficient information to admit remaining averments, therefore deny.

28. Defendant Chris Vickery refers to himself as a “security researcher” who worked as an IT help desk technician until he claimed to have “stumbled upon” allegedly publicly exposed databases used by MacKeeper.com (owned by Defendant Kromtech).

29. Admit Defendant Kromtech operates MacKeeper.com and owns the product known as MacKeeper, an app for cleaning, optimizing, and securing Mac computers. Deny remaining averments.

30. Admit Kromtech solicited business from Vickery after he viewed its data systems. Deny remaining averments.

31. Admit Vickery performed services for Kromtech and contributed to MacKeeper.com Security Research Center and blog.

32. Admit Vickery has publicized his findings as a “successful” security researcher. Deny remaining averments.

33. Deny.

B. Chris Vickery’s Hacking History

34. Vickery does not have a certification from an accredited body as a security professional and does spend time on the internet. Deny remaining averments.

35. Admit that Vickery discovered a publicly-accessible database

1 belonging to uKnowKids.com and alerted the company to the security
2 vulnerability. Deny that Vickery conducted an unlawful attack or admitted as such
3 to the BBC.

4 36. Deny.

5 37. Deny.

6 **C. Defendants' Computer Hacking Campaign**

7 38. Admit.

8 39. Admit csoononline.com posted the following statement to CXO's
9 "Salted Hash" security blog: "This is the story of how River City Media (RCM),
10 Alvin Slocombe, and Matt Ferris, accidentally exposed their entire operation to
11 the public after failing to properly configure their Rsync backups." Without
12 sufficient information and therefore deny remaining averments.

13 40. In this (and other) articles more fully described below, csoononline.com
14 reported opinions that River City misconfigured a type of computer backup
15 system and accidentally exposed its entire system to the public. Deny remaining
16 averments.

17 41. Vickery lacks sufficient information to form a belief as to the
18 statements and therefore denies.

19 42. Vickery lacks sufficient information to form a belief as to the
20 statements and therefore denies.

21 43. Vickery does not believe a response is required. To the extent one is
22 required, admit.

23 44. Vickery does not believe a response is required. To the extent one is
24 required, admit in part and deny in part as it depends on unstated variables.

25 45. Vickery does not believe a response is required. To the extent one is
26 required, admit one can examine IP addresses and make informed decisions about
27

1 which connections are valid. Deny remaining averments.

2 46. Admit some use IP address restrictions to create “Access Control
3 Lists” (ACL), which are simply lists of IP addresses that are expressly authorized
4 to log into and access certain systems, and the system can be designed so that if a
5 person uses an IP address not listed on the ACL, that person is denied access.
6 Deny that the phrase “that person nonetheless gains access, his access is, by
7 definition, without authorization,” requires a response. Without sufficient
8 information to form a belief and therefore deny River City secured some of its
9 network assets with ACLs. Deny remaining averments.

10 47. Without sufficient information to form a belief and therefore deny.

11 48. Without sufficient information to form a belief and therefore deny.

12 49. Without sufficient information to form a belief and therefore deny.

13 50. Without sufficient information to form a belief and therefore deny.

14 51. Without sufficient information to form a belief and therefore deny.

15 52. Without sufficient information to form a belief and therefore deny.

16 53. The statement is argument and does not require a response. To the
17 extent it is interpreted otherwise, deny.

18 54. Deny.

19 55. Without sufficient information to form a belief and therefore deny.

20 56. Without sufficient information to form a belief and therefore deny.

21 57. Without sufficient information to form a belief and therefore deny.

22 58. Admit Vickery uses a “protonmail.com” email address. Without
23 sufficient information to form a belief and therefore deny remaining averments.

24 59. Without sufficient information to form a belief and therefore deny.

25 60. Deny.

26 61. Without sufficient information to form a belief and therefore deny.

62. Admit.

63. Deny.

D. Defendants' Media Campaign

64. Deny.

65. a. Admit that Vickery posted an article entitled "Spammergate: The Fall of an Empire." Deny that the article contained libelous and false statements.

b. Admit Defendant Ragan posted an article entitled "Spammers expose their entire operation through bad backups" at <http://www.csoonline.com/article/3176433/security/spammersexpose-their-entire-operation-through-bad-backups.html> (the "Ragan Article"); deny it contained libelous and false statements;

66. Admit Vickery's article refers to an "illegal operation," and both articles refer to illegal techniques; deny remaining averments.

67. Vickery lacks sufficient information to form a belief as to the statements and therefore denies.

68. Vickery lacks sufficient information to form a belief as to the statements and therefore denies.

69. Vickery lacks sufficient information to form a belief as to the statements and therefore denies.

E. The Vickery and Ragan Articles

70. Admit that Defendants published Vickery's article "Spammergate: The Fall of an Empire." Deny remaining averments.

71. Admit these statements were in the Vickery Article, yet deny falsity and defamation:

a. "River City masquerades as a legitimate marketing firm while, per their own documentation, being responsible for up to a billion daily email

1 sends.”

2 b. “How can a group of about a dozen people be responsible for one billion
3 emails sent in one day? The answer is a lot of automation, years of research,
4 and a fair bit of illegal hacking.”

5 72. Admit that Vickery’s article states that River City’s technique of
6 “purposely throttling [its] own machinery to amass open connections on someone
7 else’s server is a type of Slowloris attack.” Deny that the statement is false.

8 73. Admit the Ragan Article makes the following statements in reference
9 to River City, but deny remaining averments:

10 a. “Once we concluded that this was indeed related to a criminal
11 operation...”

12 b. River City “exploit[ed] a number of providers in order to inbox offers.”

13 c. Quoting Spamhaus’s Mike Anderson: “Nobody would knowingly give
14 their email address to spammers, so they have to be tricked into it...the
15 original contract for handing over the address is never fulfilled, since it
16 turns out to be impossible to redeem the ‘free gift’ or only with extreme
17 difficulty.”

18 74. Admit the Ragan Article links to the Vickery Article on
19 MacKeeper.com. Deny remaining averments.

20 75. Deny.

21 76. Deny.

22 **F. River City’s Cease and Desist Letters**

23 77. On March 12, 2017, River City directed its legal counsel to issue
24 cease and desist letters to the parties named in this lawsuit, as well as AOL, Inc.,
25 because of an article posted on its tech blog, www.techcrunch.com.

26 78. The cease and desist letters requested that Defendants and non-party
27

1 AOL, Inc. remove the Defamatory Articles, publicly retract the accusations made
2 against River City and apologize to River City.

3 79. Admit.

4 80. Deny.

5 81. Deny.

6 **V. FIRST CAUSE OF ACTION**

7 **(Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030)**

8 82. Vickery hereby incorporates by reference the foregoing paragraphs as
9 though fully set forth herein.

10 83. Admit Vickery is not an employee of River City's. Deny remaining
11 averments.

12 84. Deny.

13 85. Deny.

14 86. Deny.

15 87. Deny.

16 88. Deny.

17 89. Deny.

18 90. Deny.

19 **VI. SECOND CAUSE OF ACTION**

20 **(Violations of the Stored Communications Act, 18 U.S.C. § 2701 et seq.)**

21 91. Vickery hereby incorporates by reference the foregoing paragraphs as
22 though fully set forth herein.

23 92. Admit Defendant Vickery is not an employee of River City's. Deny
24 remaining averments.

25 93. Deny.

26 94. Deny.

1 95. Deny.

2 96. Deny.

3 97. Deny.

4 98. Deny.

5 99. Deny.

6 100. Deny.

7 **VII. THIRD CAUSE OF ACTION**

8 **(Violations of the Defend Trade Secrets Act, 18 U.S.C. § 1832 et seq.)**

9 101. Vickery hereby incorporates by reference the foregoing paragraphs as
10 though fully set forth herein.

11 102. Admit Defendant Vickery is not an employee of River City's. Deny
12 remaining averments.

13 103. Deny.

14 104. Deny.

15 105. Deny.

16 106. Deny.

17 107. Deny.

18 108. Deny.

19 109. Deny.

20 **VII. FOURTH CAUSE OF ACTION**

21 **(Violations of the Electronic Comm'ns. Privacy Act, 18 U.S.C. § 2510 et seq.)**

22 110. Vickery hereby incorporates by reference the foregoing paragraphs as
23 though fully set forth herein.

24 111. Admit Defendant Vickery is not an employee of River City's. Deny
25 remaining averments.

26 112. Deny.

1 113. Deny.

2 114. Deny.

3 115. Deny.

4 116. Deny.

5 117. Deny.

6 **VIII. FIFTH CAUSE OF ACTION**

7 **(Invasion of Privacy)**

8 118. Vickery hereby incorporates by reference the foregoing paragraphs as
9 though fully set forth herein.

10 119. Deny.

11 120. Deny.

12 121. Deny.

13 122. Deny.

14 123. Deny.

15 124. Deny.

16 **IX. SIXTH CAUSE OF ACTION**

17 **(Intentional Interference with Contractual Relationships)**

18 125. Vickery hereby incorporates by reference the foregoing paragraphs as
19 though fully set forth herein.

20 126. Admit.

21 127. Without sufficient information and therefore deny.

22 128. Deny.

23 129. Deny.

24 130. Deny.

X. SEVENTH CAUSE OF ACTION

(Intentional Interference with Business Expectancy)

131. Vickery hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

132. Without sufficient information and therefore deny.

133. Deny.

134. Deny.

135. Deny.

XI. EIGHTH CAUSE OF ACTION

(Conversion)

136. Vickery hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

137. Deny.

138. Deny.

139. Deny.

140. Deny.

141. Deny.

XII. NINTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

142. Vickery hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

143. Admit Defendant Vickery is not an employee of River City's. Deny remaining averments.

144. Deny.

145. Deny.

146. Deny.

1 147. Deny.

2 148. Deny.

3 149. Deny.

4 150. Deny.

5 151. Deny.

6 **XIII. TENTH CAUSE OF ACTION**

7 **(Defamation)**

8 152. Vickery hereby incorporates by reference the foregoing paragraphs as
9 though fully set forth herein.

10 153. Deny.

11 154. Deny.

12 155. Deny.

13 156. Deny.

14 157. Deny.

15 158. Deny.

16 **XIV. AFFIRMATIVE DEFENSES**

17 A. Lack of personal jurisdiction.

18 B. Improper venue.

19 C. Illegality.

20 D. Privilege to act, including competition and public interest.

21 E. California law applies to some aspects of the case.

22 F. Unclean hands.

23 G. Vickery acted at all times in good faith.

24 H. Justification.

25 I. Plaintiffs consented.

26 J. Defense of self or others, and property.

1 K. Failure to mitigate.

2 L. Necessity to prevent a nuisance, trespass, or breach of rights to others.

3 M. Plaintiff recovery would be contrary to public policy.

4 **XV. COUNTERCLAIM**

5 Vickery is filing the answer today at the request of plaintiffs and reserves
6 the right to amend his answer to include counterclaims.

7 **XVI. REQUEST FOR RELIEF**

8 Defendant Vickery respectfully requests the following relief:

9 1. Dismissal with prejudice;

10 2. Attorney's fees and costs; and

11 3. Other such relief as the court deems just and equitable.

12 DATED this 12th day of June, 2017.

13
14 ROCKE | LAW Group, PLLC

15 s/ Aaron Roche

16 Aaron Roche, WSBA #31525

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18 Seattle, WA 98104

19 (206) 652-8670

20 aaron@rockelaw.com

21 Attorney for Defendant Vickery

DECLARATION OF SERVICE

I caused a copy of the foregoing Defendant Vickery's Answer and Affirmative Defenses to be served to the following in the manner indicated:

Via ECF to:

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On today's date.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my belief.

Signed and DATED this 12th day of June, 2017 in Seattle, Washington.

s/ Sarah Borsic
Sarah Borsic, Legal Assistant